

FAQs - Custody & Parenting

What are the different types of custody?

Joint custody means that both parents must agree on major decisions that affect their children, including medical and educational decisions. One parent cannot decide these things without the agreement of the other. If they disagree, they must find a way to resolve their dispute. If one parent has sole custody of the children, this means that he or she can make all of the important decisions about the child, even if the other parent disagrees. Sometimes the parent with sole custody must talk to the other parent before making the decision. Sole custody is not usually awarded by the Courts unless one parent clearly demonstrates an inability to act in the best interests of the children.

What is primary care?

Primary care means that the children live with one parent most of the time. That parent makes the day-to-day decisions about the children most of the time.

What types of access/ parenting time is awarded to the parent who does not have primary care of the children?

- a) Reasonable access/Parenting time – a term in a Court Order or Parenting Plan that allows the children to visit or spend time with a parent at times arranged and agreed upon by both parties.
- b) Specified access/ Parenting time – a term in a Court Order or Parenting Plan that sets out specific times for the children to visit with each parent
- c) Supervised access/ Parenting time – a term in a Court Order or Parenting Plan that means that the children only spend time with one parent while that parent is being supervised by another adult. Supervised access is generally only ordered in unusual situations where there is some risk to the safety of the children, such as where one parent has addiction problems, long absences, there is a risk of abduction or the parent has untreated mental health issues.

What is shared parenting?

Shared parenting occurs when each parent has the children living with them for at least 40% of the time over the course of the year. For example, the parents may decide that the children will live one week at the mother's home, followed by one week at the father's home, with the children continue to alternate between each parent's home on a week-on, week off basis.

How does the Court decide what parenting schedule is best for the children?

The Courts review all of the relevant factors and circumstances of the parents and the children to determine which parenting schedule is in the best interests of the children.

Do the children have a say in any decisions by the Court which create a parenting schedule?

The Courts may give some weight to the children's wishes depending on their age and level of maturity. The Courts would give more weight to the wishes of a sixteen year old child as opposed to a six year old child, due to the concern that a younger child may lack capacity to understand the complexity of parenting issues.

Should I ask the children where they want to live?

Children should never be asked to make a choice between one parent and the other. Divorce is a difficult process for children. Children may wish to please both parents, with the result being that the children tell each parent what that parent wants to hear.

Do I need to discuss every detail about the children with the other parent?

If you share joint custody (decision-making) with the other parent, you should discuss every major decision with the other parent, such as which school the children will attend, which doctor will treat the children, and whether the children will participate in sports or other extracurricular activities.

The children say that they don't want to see the other parent. Do I have to force them to see their father/mother?

It is not unusual for children to refuse to go to another parent's home. Many children find these transitions difficult and may refuse to go, or if they go, may act out for a period of time after the transition. Unless there are safety concerns with the other parent's home, parents are expected to take all reasonable steps to ensure that the children transition to the other parent's home. Children may not want to go to visit the other parent because they are worried about the parent they are leaving. Sometimes the transition is more difficult and traumatic for the parent than it is for the children. Let the children know that you will be fine while they are visiting the other parent.

What if the other parent will not return the children after a visit?

What you are able to do in this situation will depend on your circumstances and whether you have a Court Order or not. If you do not have a Court Order in place for Custody and Access, you can apply to Court for an Order. If you already have a Court Order in place, you can make an application to have the existing Order enforced, or you can apply to change the existing Order, depending on your circumstances.

Sometimes, the Police may get involved when a parent does not return the children. Generally, the Police only get involved if the child is in danger or there is a Court Order in place that states which parent the children are supposed to be with. In certain situations, a Court Order may include a Police Enforcement Clause authorizing the Police to ensure that the children are returned after any visits.

If I am being denied access with my children, do I still have to pay child support?

Yes. Access to your children and the obligation to pay child support are two separate things. You cannot use one against the other. It is the children's right to have contact with each parent and it is the children's right to be financially supported by both parents. You cannot deny one of the children's rights (financial support) because you are being denied access with the children. If you are being denied access with your children, you should contact our office for advice. If you do not have an Order for access, you should apply for an Order. If you already have an Order for access, there may be ways to change or enforce that Order.

The other parent isn't paying child support. Do I still have to let the children visit the other parent?

Yes. As stated above, child support and access are two separate things. You cannot use one against the other. If you are not receiving child support from the other parent, please contact our office for information and advice. If you do not have a Court Order for child support, you need to apply for one. If you already have any Order for child support, you can have this Order enforced through the Maintenance Enforcement Program.

What if the other parent doesn't visit the children when they are supposed to?

Unfortunately, it is very difficult to make someone visit their children. If the other parent is not exercising their specified access, you should keep track of the dates and times when this occurs. If the other parent is ill, or is called in to work, it may be reasonable for them to miss their access visit. However, the other parent should notify you as soon as possible if they are not able to see the children for their scheduled visit. If the other parent misses many visits with the children for no good reason, you should consider making an application to change the existing Order regarding access.

Is Shared Parenting (50/50) the best arrangement for both parents?

The focus should be on whether shared parenting is in the best interests of the children, not the parents. Shared Parenting works well in some situations, but the parents must consider their respective work schedules, the children's school and activity schedules, how far apart the parent's live from each other's homes and the children's school, and the age, development, personality and needs of the children.

If the other parent and I share parenting of the children, does that mean that I don't have to pay child support?

No. You may still be required to pay child support. This will depend on the respective incomes of both parents and the additional Section 7 expenses of the children.

I want to move with the children to another City or Province and don't want to ask the other parent for permission. Can I move first and tell the other parent after I have moved?

No. This is not recommended. The other parent could go to Court and obtain an Order forcing you to return the children. Making a unilateral decision to move away with the children without giving notice or getting consent from the other parent could backfire against you in Court and damage your rights regarding custody of and access to the children.

What will the other parent be able to use against me to gain custody of the children?

If custody is in dispute, you should assume that the other parent might tell the Court about incidents in your past that call into question your ability to care for the children. The Court may or may not be concerned with the incidents from your past, depending on the nature of the incidents and the time that has passed since the incidents occurred. The Court will consider whether the incidents reflect a pattern of behavior or are isolated incidents. The Court will also consider how relevant the incidents are for your ability to meet the needs of the children.

Can my need for counseling or treatment for depression be used against me?

The Courts are usually quite understanding that separation and divorce are very stressful times. You should not be discouraged from seeking professional help if you need it. The Courts will likely be more sympathetic to a parent who needs treatment and is receiving it, than they will be to a parent who needs treatment but is refusing it.

Is it an issue if I drink alcohol?

If your use of alcohol has been raised as an issue by the other parent, you should not drink alcohol when the children are in your care. The Courts are always very sensitive to concerns about safety and the best interests of the children. You do not want the Courts to consider your alcohol use to be a safety issue or an activity that is contrary to the best interests of the children.

When is it appropriate to start dating again?

You should be extremely cautious if you are considering dating following separation. It is important that your dating not have a negative impact on your children. If you do decide to date, you should only do so when the children are not in your care. You should be particularly cautious about introducing anyone new to your children. Keep in mind that if your spouse learns that you are seeing someone new, this can cause a dramatic increase in conflict with your divorce, which can affect the time it takes to settle your case. If you do decide to date, it is important to be discreet.

My spouse has been abusive. How will this affect the divorce?

You should advise your lawyer if your spouse has been abusive. This may affect arrangements regarding parenting. It may be necessary for your lawyer to obtain a Court Order to ensure your safety and/or the safety of the children.